IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

FRIDAY, THE 5TH JANUARY 2007 / 15TH PAUSHA 1928

WP(C).No. 33702 of 2006(K)

AGAINST THE ORDER IN IA 2496/05 IN OS.288/2005 of
IST ADDL.MUNSIFF COURT,KOCHI

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PETITIONERS:

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1. K.E.GEORGE, AGED 38, S/O.EASY,
KANDATHIPARAMBIL, KUMBALANGHI,
KOCHI-7.

2. K.E.SEVY, S/O.EASY, AGED 30 YEARS,
KANDATHIPARAMBIL HOUSE, KUMBALANGHI,
KOCHI-7.

BY ADV. SRI.K.S.HARIHARAPUTHRAN
SRI.GEORGE MATHEW

RESPONDENT:

M.K.REGHU, AGED 67,
S/O.NALLAKKAN, MANAKKAPADATH HOUSE,
CHOTTANIKKARA, KANAYANNUR TALUK.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 05/01/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.SASIDHARAN NAMBIAR, J.

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W.P.(C)No.33702 OF 2006

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DATED THIS THE 5TH DAY OF JANUARY, 2007

JUDGMENT

Petitioners are defendants in O.S.288 of 2005 on the file of Additional Munsiff Court, Kochi. Respondent is the plaintiff. Respondent instituted the suit in respect of a bus. According to the respondent he is the owner of the bus and according to the petitioners they are the owners of the bus. First petitioner is the registered owner of the vehicle. According to respondent as per the sale agreement, he is the owner. The genuineness of the sale agreement was disputed. Respondent filed I.A.2496 of 2005, an application under Order XL Rule 1 to appoint a Receiver to the bus. Under Ext.P3 order learned Munsiff allowed the application and appointed first petitioner, the registered owner, as the Receiver. Petitioner challenged that order before Sub Court, Kochi in CMA 7 of 2006. Under Ext.P4 order, confirming Ext.P3 order appeal was dismissed. It is challenged in this petition filed under Article 227 of Constitution of India.

2. Argument of the learned counsel appearing for

petitioner was that as the first petitioner is the registered owner of the bus and the suit is only for mandatory injunction, no Receiver should have been appointed and hence the orders are to be quashed.

3. On hearing learned counsel appearing for the petitioners, I do not find any reason to interfere with Exts.P3 and P4 orders in exercise of the extra ordinary jurisdiction of this court under Article 227 of Constitution of India. The dispute is with regard to the genuineness of the sale agreement. If in the suit it is found that sale agreement is genuine and valid, then first petitioner cannot claim any right on the vehicle. On the other hand if the sale agreement is found to be not executed by the first petitioner, respondent cannot claim any right over the bus. The question whether the agreement is genuine or not is to be decided in the suit. In such circumstances, I do not find any reason to interfere with the concurrent order, as by the order first petitioner was not being dispossessed. At best it could be said that he is liable to account for the vehicle. The order is perfectly legal and regular. In such circumstances, the

discretion rightly exercised by the trial court and confirmed by the appellate court, warrant, no interference. The writ petition is dismissed. Petitioners are granted ten days time from today to execute the bond as directed by the learned Munsiff under Ext.P3 order.

M.SASIDHARAN NAMBIAR, JUDGE

lgk/-